

No. 24-1285

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

APPLE INC.,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

MASIMO CORPORATION, CERCACOR LABORATORIES, INC.,

Intervenors.

Appeal from the United States International Trade Commission,
Investigation No. 337-TA-1276

**CORRECTED JOINT MOTION OF APPELLEE INTERNATIONAL
TRADE COMMISSION AND INTERVENORS MASIMO CORPORATION
AND CERCACOR LABORATORIES, INC. FOR AN EXTENSION OF TIME
TO FILE THEIR RESPONSE BRIEFS**

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JOSEPH R. RE
Counsel for Masimo Corporation and
Cercacor Laboratories, Inc.
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404

Dated: May 3, 2024

Pursuant to Federal Circuit Rules 26(b) and 27(a), Appellee U.S. International Trade Commission (“the Commission”) and Intervenor Masimo Corporation and Cercacor Laboratories, Inc. (“Masimo”) respectfully request a 44-day extension of time to file their response briefs in this appeal.¹ This motion is made at least seven days before the due date for the briefs. *See* Fed. Cir. R. 26(b)(1). Presently, the response briefs are due on Wednesday, May 15, 2024; the extension sought herein would extend the due date to Friday, June 28, 2024. This is the Commission’s and Masimo’s first request for an extension of time in this matter.

Good cause exists for the requested extension, as set forth more fully in the attached declaration of Ronald A. Traud, the Commission’s principal counsel. *See* Fed. Cir. R. 26(b)(3). The Commission requires the additional requested time to accommodate the obligations of Mr. Traud, who has been advising the Commission on other matters before being able to turn to this brief, and who has a pre-scheduled, non-refundable vacation planned that will interfere with the completion of this brief. Moreover, Apple has appealed many factually-intensive issues here, and additional time is warranted in view of the detailed record.

Good cause also exists for the requested extension, as set forth more fully in the attached declaration of Joseph Re, Masimo’s principal counsel. *See* Fed. Cir. R. 26(b)(3). Masimo requires the additional requested time to accommodate the obligations of the attorneys for Masimo involved in or contributing to this

¹ This corrected motion is identical to the joint motion filed on May 2, 2024, except that a certificate of interest is appended.

proceeding. These attorneys are involved with numerous other matters that have briefing and oral argument deadlines that necessitate the requested extension. And again, Apple has appealed many factually-intensive issues here, and additional time is warranted in view of the detailed record.

Apple has stated that it would not oppose this motion if the Commission and Masimo agree to not oppose a potential future motion to expedite the scheduling of oral argument. Because it is unclear what that future motion will entail or what scheduling conflicts may exist when briefing is complete, that condition is unacceptable to either the Commission or Masimo. Accordingly, we understand that Apple will oppose this motion.

For the foregoing reasons, the Commission and Masimo respectfully request that the time for filing the response briefs in this appeal be extended until June 28, 2024.

Dated: May 3, 2024

Respectfully submitted,

<p><u>/s/ Ronald. A. Traud</u> DOMINIC L. BIANCHI General Counsel WAYNE W. HERRINGTON Attorney Advisor RONALD A. TRAUD Attorney Advisor Office of the General Counsel U.S. International Trade Commission 500 E Street, S.W. Washington, DC 20436 Tel: (202) 205-3427 Fax: (202) 205-3111 ronald.traud@usitc.gov</p> <p><i>Counsel for Appellee International Trade Commission</i></p>	<p><u>/s/ Joseph R. Re</u> Joseph R. Re <i>Principal Counsel</i> Stephen C. Jensen Sheila N. Swaroop Brian C. Claassen KNOBBE, MARTENS, OLSON & BEAR, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 (949) 760-0404</p> <p>Jonathan E. Bachand KNOBBE, MARTENS, OLSON & BEAR, LLP 1717 Pennsylvania Avenue N.W. Suite 900 Washington, DC 20006 (202) 640-6400</p> <p><i>Counsel for Intervenors Masimo Corporation and Cercacor Laboratories, Inc.</i></p>
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APPLE INC.,

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INTERNATIONAL TRADE COMMISSION,

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DECLARATION OF RONALD A. TRAUD

I, Ronald A. Traud, declare as follows:

1. This declaration is made in connection with the Joint Motion of Appellee International Trade Commission and Intervenor Masimo Corporation and Cercacor Laboratories, Inc. for an Extension of Time to File Their Response Briefs, seeking an extension of time of 44 days to file their response briefs in the above-captioned appeal. Presently, the response briefs are due on Wednesday, May 15, 2024; the extension sought therein would extend the due date to Friday, June 28, 2024. This is the Commission's and Masimo's first request for an extension of time in this matter.

2. Good cause exists for the requested extension. I am the Commission's principal counsel in this case and am preparing the Commission's brief in this appeal by myself. I am the only attorney in the Commission's General Counsel's Office (which is responsible for preparing briefs to this Court) familiar with the facts of the investigation giving rise to the present appeal.

3. The Commission requires the additional requested time to accommodate my obligations, as I have been advising the Commission on other matters before being able to turn to this brief, and I have a pre-scheduled, non-refundable vacation planned that will interfere with the completion of this brief. As a result of these obligations, I will need an additional 44 days to complete the Commission's brief.

4. Based on the foregoing, the Commission respectfully requests a 44-day extension. Absent an extension, the deadline for the Commission's and Masimo's response briefs would be May 15, 2024. With a 44-day extension, the deadline for the Commission's brief would be June 28, 2024.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 2, 2024

/s/ Ronald A. Traud/

Ronald A. Traud

Office of the General Counsel

U.S. International Trade Commission

500 E Street, S.W.

Washington, DC 20436

(202) 205-3427

Counsel for the U.S. International Trade Commission

Appeal No. 24-1285

IN THE
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FOR THE FEDERAL CIRCUIT

APPLE INC.,

Appellant,

v.

UNITED STATES INTERNATIONAL TRADE COMMISSION,

Appellee,

MASIMO CORPORATION, CERCACOR LABORATORIES, INC.,

Intervenors.

Appeal from the United States International Trade Commission
Investigation No. 337-TA-1276

**DECLARATION OF JOSEPH R. RE IN SUPPORT OF APPELLEE'S AND
INTERVENORS' JOINT MOTION FOR EXTENSION TO FILE
RESPONSE BRIEFS**

I, Joseph R. Re, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at Knobbe Martens Olson & Bear LLP, counsel of record for Intervenor Masimo Corporation and Cercacor Laboratories, Inc. (“Masimo”) in the above-captioned appeal. I have personal knowledge of the facts in this declaration, and if called and sworn as a witness, could testify competently to them. I make this declaration in support of Appellee’s and Intervenor’s Joint Motion For An Extension of Time To File Their Response Briefs.

2. Good cause exists for the requested extension of time because the attorneys for Masimo involved in or contributing to this proceeding are also currently involved in numerous matters, including the representative matters below:

- a. An *inter partes* 19 C.F.R. Part 177 proceeding before the Exclusion Order Enforcement Branch relating to ITC Investigation No. 337-TA-1276, the investigation on appeal;
- b. *Masimo v. Apple*, 20-cv-00048-JVS-JDE (C.D. Cal.);
- c. *Clearplay, Inc. v. DISH Network L.L.C.*, Appeal No. 23-2134 (Fed. Cir.);
- d. *PIPStek, LLC v. Biolase, Inc.*, 23-cv-0011-JPM (D. Del.); and
- e. *VIZIO, Inc. v. Polaris PowerLED*, IPR2024-00073 (PTAB)

3. In view of the obligations in these matters, including briefing and oral argument deadlines involving counsel involved in or contributing to this appeal, the

requested extension of time to file Masimo's response brief is necessary. Without an extension Masimo will suffer hardship related to the unavailability of the attorneys contributing to and/or involved with this appeal to make contributions to this case due to other obligations.

4. On April 30, 2024, Masimo contacted counsel for Apple to provide notice of this extension and to seek Apple's position on this motion. It is expected that Apple will oppose the motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 2, 2024 at Irvine, California.

/s/ Joseph R. Re
Joseph R. Re

**CERTIFICATE OF COMPLIANCE
PURSUANT TO FED. R. APP. P. 27(d)(2)(A), 32(g)**

Pursuant to Fed. R. App. P. 27(d)(2)(A) and 32(g), I hereby certify that the attached motion complies with the type-volume limitation and typeface requirements. The response has been prepared in a proportionally spaced typeface (14-point Times New Roman font), and the motion contains 408 words according to the word-count function of the word-processing system (Microsoft 365).

/s/ Ronald A. Traud/

Ronald A. Traud

Office of the General Counsel

U.S. International Trade Commission

500 E Street, S.W.

Washington, DC 20436

(202) 205-3427

Counsel for the U.S. International Trade Commission

CERTIFICATE OF SERVICE

I, Ronald A. Traud, hereby certify that, on this 3rd day of May 2024,
I caused a copy of the foregoing **Corrected Joint Motion of Appellee
International Trade Commission and Intervenor Masimo Corporation and
Cercacor Laboratories, Inc. for an Extension of Time to File their Response
Briefs**, to be served on counsel of record via the Court's CM/ECF system.

/s/Ronald A. Traud
Ronald A. Traud
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FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2024-1285

Short Case Caption Apple Inc. v. ITC

Filing Party/Entity Intervenors Masimo Corporation and Cercacor Laboratories, Inc.

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: May 2, 2024

Signature: /s/ Joseph R. Re

Name: Joseph R. Re

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Masimo Corporation		BlackRock, Inc. owns at least 10% of Masimo Corporation's stock.
Cercacor Laboratories, Inc.		None.

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
March 2023

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☒ Additional pages attached

Knobbe, Martens, Olson & Bear, LLP	William R. Zimmerman	Irfan A. Lateef
Alan G. Laquer	Kendall M. Loebbaka	Carol Pitzel Cruz
Douglas B. Wentzel	Ted C. Cannon	William R. Zimmerman

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☒ Yes (file separate notice; see below) ☐ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable ☐ Additional pages attached

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST ATTACHMENT

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4). (Cont.)

Daniel C. Kiang
Karl W. Kowallis
Matthew S. Friedrichs